



## **Texas Department of Insurance**

### **Division of Workers' Compensation**

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

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## **MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION**

### **GENERAL INFORMATION**

#### **Requestor Name and Address**

SPINE HOSPITAL OF SOUTH TEXAS  
18600 N. HARDY OAK BLVD  
SAN ANTONIO, TX 78258

**DWC Claim #:**

**Injured Employee:**

**Date of Injury:**

**Employer Name:**

**Insurance Carrier #:**

#### **Respondent Name**

COMMERCE & INDUSTRY INSURANCE

**Carrier's Austin Representative Box**

19

#### **MFDR Tracking Number**

M4-07-3412-01

**MFDR Date Received**

FEBRUARY 01, 2007

### **REQUESTOR'S POSITION SUMMARY**

**Requestor's Position Summary Dated August 23, 2011:** "Our original MDR appeal requested to be paid at 75% of billed charges according to Texas Administrative Code 134.401 for Acute Inpatient Hospital Fee Guidelines for hospital admissions exceed the \$40,000. minimum threshold. We are asking that the entire admission be paid at 75% of billed charges based on unusual extensive services required during the admission. "

**Amount in Dispute:** \$54,600.32

### **RESPONDENT'S POSITION SUMMARY**

**Respondent's Position Summary Dated February 26, 2007:** "This is a medical fee dispute arising from an inpatient hospital surgical admission, dates of service 09/30/2006 to 09/30/2006. Requestor billed a total of \$77,038.52. The Requestor asserts it is entitled to reimbursement in the amount of \$57,778.89, which is 75% of the total charges. Requestor has not shown entitlement to this alternative, exceptional method of calculating reimbursement and has not otherwise properly calculated the audited charges ... To qualify for stop loss, the services provided by the hospital must be unusually costly to the hospital as opposed to unusually priced to the carrier. The services provided by the hospital (not by a physician attending a patient while in the hospital) must be unusually extensive. Exceptional cases will be entitled to reimbursement under the stop loss exception. There is no evidence submitted by the hospital demonstrating that the services provided by the hospital were unusually extensive. There is no evidence of "complications, infections, or multiple surgeries" requiring additional services by the hospital."

**Response Submitted by:** Flahive, Ogden & Latson

**Respondent's Supplemental Position Summary Dated September 09, 2011:** "Based upon Respondent's initial and all supplemental response, and in accordance with the Division's obligation to adjudicate the payment, in accordance with the Labor Code and Division rules, Requestor has failed to sustain its burden of proving entitlement to the stop-loss exception. The Division must conclude that payment should be awarded in accordance with the general *per diem* payment in accordance with 28 Tex Admin. Code § 134.401 ..."

### ***SUMMARY OF FINDINGS***

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
September 26, 2006 through September 30, 2006	Inpatient Hospital Services	\$54,600.32	\$0.00

### ***FINDINGS AND DECISION***

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

#### **Background**

1. 28 Texas Administrative Code §133.305 and §133.307, 31 *Texas Register* 10314, applicable to requests filed on or after January 15, 2007, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.
3. 28 Texas Administrative Code §134.1, 31 *Texas Register* 3561, effective May 2, 2006, sets out the guidelines for a fair and reasonable amount of reimbursement in the absence of a contract or an applicable division fee guideline.

The services in dispute were reduced/denied by the respondent with the following reason codes:

#### **Explanation of Benefits**

- 1 42 – Charges exceed our fee schedule or maximum allowable amount

#### **Issues**

1. Did the audited charges exceed \$40,000.00?
2. Did the admission in dispute involve unusually extensive services?
3. Did the admission in dispute involve unusually costly services?
4. Is the requestor entitled to additional reimbursement?

#### **Findings**

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 Texas Register 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 South Western Reporter Third 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services." Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the division will address whether the total audited charges **in this case** exceed \$40,000; whether the admission and disputed services **in this case** are unusually extensive; and whether the admission and disputed services **in this case** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that "Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection..." 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states "...to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold." Furthermore, (A) (v) of that same section states "...Audited charges are those charges which remain after a bill

review by the insurance carrier has been performed...” Review of the explanation of benefits issued by the carrier finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal \$77,038.52. The division concludes that the total audited charges exceed \$40,000.

2. The requestor in its position statement asserts that “Our original MDR appeal requested to be paid at 75% of billed charges according to Texas Administrative Code 134.401 for Acute Inpatient Hospital Fee Guidelines for hospital admissions exceed the \$40,000. minimum threshold. We are asking that the entire admission be paid at 75% of billed charges based on unusual extensive services required during the admission. We have previously submitted the patient medical records with the prior MDR appeal. It is worth noting that on September 26, 2006 our patient [Injured Worker] had decompressive redo laminectomy, L4-L5, L5-S1, bilateral redo L4-L5, L5-S1 medial facetectomies with bilateral L4, L5 and S1 nerve root foraminotomies and subarticular decompression-neurolysis, L5-S1 subtotal discectomy, L5-S1 posterior lumbar interbody fusion with BMP, L5-S1 bilateral Capstone Cage insertion, L4-L5, L5-S1 bilateral segmental pedicle instrumentation Legacy screws to sacrum, L4-L5, L5-S1 bilateral posterolateral intertransverse fusion with auto graft, master graft – BMP, harvesting auto graft, epidural Duramorph.” The requestor presupposes that it is entitled to the stop loss method of payment. As noted above, the Third Court of Appeals in its November 13, 2008 rendered judgment that “to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved...unusually extensive services.” The requestor failed to demonstrate that the particulars of the admission in dispute constitute unusually extensive services in comparison to similar surgeries; therefore, the division finds that the requestor did not meet 28 TAC §134.401(c)(6).
3. In regards to whether the services were unusually costly, the third Court of Appeals’ November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must **demonstrate** that an admission involved unusually costly services thereby affirming 28 Texas Administrative Code §134.401(c)(6) which states that “Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker.” The requestor failed to demonstrate the particulars of the admission in dispute that constitute unusually costly services in comparison to similar surgeries; therefore, the division finds that the requestor failed to meet 28 TAC §134.401(c)(6).
4. For the reasons stated above the services in dispute are not eligible for the stop-loss method of reimbursement. Consequently, reimbursement shall be calculated pursuant to 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *Additional Reimbursements*. The division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.
  - Review of the submitted documentation finds that the services provided were surgical; therefore the standard per diem amount of \$1,118.00 per day applies. Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that “The applicable Workers’ Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission...” The length of stay was four days. The surgical per diem rate of \$1,118.00 multiplied by the length of stay of four days results in an allowable amount of \$4,472.00.
  - 28 Texas Administrative Code §134.401(c)(4)(C) states “Pharmaceuticals administered during the admission and greater than \$250 charged per dose shall be reimbursed at cost to the hospital plus 10%. Dose is the amount of a drug or other substance to be administered at one time.” A review of the submitted itemized statement finds that the requestor billed one unit of Thrombin – JMI 20,000 at \$644.96/unit, for a total charge of \$644.96. The requestor did not submit documentation to support what the cost to the hospital was for Thrombin – JMI 20,000. For that reason, reimbursement for these items cannot be recommended
  - 28 Texas Administrative Code §134.401(c)(4)(B) allows that “When medically necessary the following services indicated by revenue codes shall be reimbursed at a fair and reasonable rate: (iv) Blood (revenue codes 380-399).” A review of the submitted hospital bill finds that the requestor billed \$262.00 for revenue code 390 – Blood Storage & Processing. 28 Texas Administrative Code §133.307(g)(3)(D), requires the requestor to provide “documentation that discusses, demonstrates, and justifies that the payment amount being sought is a fair and reasonable rate of reimbursement.” Review of the submitted documentation finds that the requestor does not demonstrate or justify that the amount sought for revenue codes 390 would be a fair and reasonable rate of reimbursement. Additional payment cannot be recommended.
  - The division notes that 28 Texas Administrative Code §134.401(c)(4)(A), states “When medically necessary the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i)

Implantables (revenue codes 275, 276, and 278), and (ii) Orthotics and prosthetics (revenue code 274).” Review of the requestor’s medical bills finds that the following items were billed under revenue code 0278 and are therefore eligible for separate payment under §134.401(c)(4)(A) as follows:

Rev Code	Itemized Statement Description	Cost Invoice Description	UNITS / Cost Per Unit	Total Cost	Cost + 10%
278	Imp (Med-Tech Distributing) 50MM TI Rod	TI Rod	1 at \$372.82 ea	\$372.82	\$410.10
278	Imp (Med-Tech Distributing) 6.5 x 40MM Screw	6.5 X 40MM Screw	1 at \$1,339.89 ea	\$1,339.89	\$1,473.88
278	Imp (Med-Tech Distributing) 60MM Pre-bent Rod	60MM Prebent Rod	1 at \$372.82 ea	\$372.82	\$410.10
278	Imp (Med-Tech Distributing) 7.5 X 35MM Screw	7.5 X 35MM Screw	2 at \$1,339.89 ea	\$2,679.78	\$2,947.76
278	Imp (Med-Tech Distributing) 7.5 X 40MM Screw	7.5 X 40MM Screw	3 at \$1,339.89 ea	\$4,019.67	\$4,421.64
278	Imp Break Off Set Screw	Imp Break off set Screw	6 at \$169.54 ea	\$1,017.24	\$1,118.96
278	Imp Cpastone 10X22MM	10X22 Capstone Cage	2 at \$3,265.38 ea	\$6,530.76	\$7,183.84
278	Imp Infuse Bone Graft Kit Large (BMP)	Large Infuse kit	1 at \$5,100.00 ea	\$5,100.00	\$5,610.00
278	Imp Mastergraft 10CC Vial	10CC Mastergraft	1 at \$525.00 ea	\$525.00	\$577.50
TOTAL ALLOWABLE				\$24,153.78	

The division concludes that the total allowable for this admission is \$4,472.00 + 24,153.78. The respondent issued payment in the amount of \$30,421.68. Based upon the documentation submitted, no additional reimbursement can be recommended.

### **Conclusion**

The submitted documentation does not support the reimbursement amount sought by the requestor. The requestor in this case demonstrated that the audited charges exceed \$40,000, but failed to discuss and demonstrate that the disputed inpatient hospital admission involved unusually extensive, and unusually costly services. Consequently, 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount*, and §134.401(c)(4) titled *Additional Reimbursements* are applied and result in no additional reimbursement.

### ***ORDER***

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the division has determined that the requestor is entitled to \$0.00 reimbursement for the disputed services.

**Authorized Signature**

_____ Signature	_____ Medical Fee Dispute Resolution Officer	_____ 10/31/12 Date
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_____ Signature	_____ Medical Fee Dispute Resolution Manager	_____ 10/31/12 Date
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***YOUR RIGHT TO APPEAL***

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.****

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**